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HOUSE BILL 1415

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State of Washington                      60th Legislature                      2007 Regular Session

By Representatives Cody, Green, Morrell, Moeller and Campbell

Read first time 01/18/2007. Referred to Committee on Health Care & Wellness.

1            AN ACT Relating to activities to support the certificate of need  
2 program; amending RCW 70.38.015, 70.38.025, 70.38.095, 70.38.115,  
3 70.38.125, 70.38.135, and 70.38.105; adding new sections to chapter  
4 70.38 RCW; adding a new chapter to Title 43 RCW; and creating a new  
5 section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.** A strategic health planning process that is  
8 responsive to changing health and social needs and conditions is  
9 essential to the health, safety, and welfare of the people of the  
10 state. The strategic health planning process must be concerned with  
11 the performance of the health system, encompassing health care  
12 financing, quality, and the availability of information and services  
13 for all residents. The strategic health planning process must ensure  
14 the involvement of both consumers and health care providers in the  
15 health planning process. The outcomes of the strategic health planning  
16 process must be clearly articulated and available for public use and  
17 review.

18            Such strategic health planning, when informed by relevant data

1 about the state's health system, shall guide the state in establishing  
2 objectives and strategies to:

3 (1) Promote, maintain, and assure the health of all citizens in the  
4 state;

5 (2) Provide accessible health services through the maintenance of  
6 an adequate supply of health facilities and an adequate workforce;

7 (3) Apply specific quality criteria and population health  
8 indicators;

9 (4) Recognize prevention as a high priority in health programs;

10 (5) Address periodic priority issues including disaster planning,  
11 public health threats, and public safety dilemmas;

12 (6) Coordinate efforts among state agencies including those tasked  
13 with facility, services, and professional provider licensing; state and  
14 federal reimbursement; health service utilization data systems; and  
15 other functions relevant to health planning;

16 (7) Recognize the close interrelationship of health planning  
17 concerns and emphasize health care expenditure control, including cost-  
18 effectiveness and cost-benefit analysis;

19 (8) Integrate criteria for evidence-based medicine; and

20 (9) Regularly evaluate the impact of capacity management on health  
21 service expenditures, access, quality, and innovation.

22 NEW SECTION. **Sec. 2.** The definitions in this section apply  
23 throughout this chapter unless the context clearly requires otherwise.

24 (1) "Commission" means the Washington health resource strategy  
25 commission.

26 (2) "Health facility" or "facility" means hospices licensed under  
27 chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural  
28 health care facilities as defined in RCW 70.175.020, psychiatric  
29 hospitals licensed under chapter 71.12 RCW, nursing homes licensed  
30 under chapter 18.51 RCW, community mental health centers licensed under  
31 chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed  
32 under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical  
33 facilities licensed under chapter 70.41 RCW, drug and alcohol treatment  
34 facilities licensed under chapter 70.96A RCW, and home health agencies  
35 licensed under chapter 70.127 RCW, and includes such facilities if  
36 owned and operated by a political subdivision or instrumentality of the

1 state and such other facilities as required by federal law and  
2 implementing regulations.

3 (3) "Health service" or "service" means that service, including  
4 primary care service, offered or provided by health care facilities and  
5 health care providers relating to the prevention, cure, or treatment of  
6 illness, injury, or disease.

7 (4) "Office" means the office of strategic health resource  
8 coordination.

9 (5) "Strategy" means the statewide health resources strategy.

10 NEW SECTION. **Sec. 3.** (1) The office of strategic health resource  
11 coordination is created in the office of the governor. The office  
12 shall serve as a coordinating body for public and private efforts to  
13 improve quality in health care, promote cost-effectiveness in health  
14 care, and plan health facility and health service availability. In  
15 addition, the office shall facilitate access to health care data  
16 collected by public and private organizations as needed to conduct its  
17 planning responsibilities.

18 (2) The office shall:

19 (a) Assist the commission with its strategic health planning  
20 responsibilities and the preparation of the strategy;

21 (b) Develop a computerized system for accessing, analyzing, and  
22 disseminating data relevant to strategic health planning  
23 responsibilities. The office may contract with an organization to  
24 create the computerized system capable of meeting the needs of the  
25 office;

26 (c) Maintain access to deidentified data collected and stored by  
27 any public and private organizations as necessary to support the  
28 planning responsibilities of the commission, including state-purchased  
29 health care program data, hospital discharge data, and private efforts  
30 to collect utilization and claims-related data. The office is  
31 authorized to enter into any data sharing agreements and contractual  
32 arrangements necessary to obtain data or to distribute data. Among the  
33 sources of deidentified data that the office may access are any  
34 databases established pursuant to the recommendations of the health  
35 information infrastructure advisory board established by chapter 261,  
36 laws of 2005. The office may store limited data sets as necessary to  
37 support its activities. Unless specifically authorized, the office

1 shall not collect data directly from the records of health care  
2 providers and health care facilities, but shall make use of databases  
3 that have already collected such information;

4 (d) Conduct research and analysis or arrange for research and  
5 analysis projects to be conducted by public or private organizations to  
6 further the purposes of the commission;

7 (e) Provide administrative and technical support to the commission.

8 NEW SECTION. **Sec. 4.** (1) The health resource strategy commission  
9 is created consisting of seventeen members appointed by the governor.  
10 The commission shall be comprised of members from geographically  
11 diverse regions of the state and shall include:

- 12 (a) Three health economists or health planners;
- 13 (b) Three representatives of nongovernment health care purchasers;
- 14 (c) One representative of the department of health;
- 15 (d) One representative of the department of social and health  
16 services;
- 17 (e) One representative of the health care authority;
- 18 (f) One representative of the office of the insurance commissioner;
- 19 (g) One representative of acute care facilities;
- 20 (h) One representative of long-term care facilities;
- 21 (i) One representative of health care providers;
- 22 (j) One representative of a federally recognized Indian tribe; and
- 23 (k) Four representatives of health care consumers.

24 (2) Members of the initial commission may be appointed to staggered  
25 terms of one to four years, and thereafter all terms of appointment are  
26 for four years. No member may serve more than two consecutive full  
27 terms. Each member shall hold office until a successor is appointed.  
28 Members of the commission shall be compensated in accordance with RCW  
29 43.03.250 and shall be reimbursed for their travel expenses while on  
30 official business in accordance with RCW 43.03.050 and 43.03.060. The  
31 commission shall elect a chair from its members to serve for a term of  
32 one year or until a successor is elected. Meetings of the commission  
33 shall be at the call of the chair.

34 NEW SECTION. **Sec. 5.** (1) The commission shall develop a statewide  
35 health resources strategy. The strategy shall establish statewide  
36 health planning policies and goals related to the availability of

1 health care facilities and services, quality of care, and cost of care.  
2 The strategy shall identify needs according to geographic regions  
3 suitable for comprehensive health planning as designated by the  
4 commission.

5 (2) The development of the strategy shall consider the following  
6 general goals and principles:

7 (a) That the structural limitations of health care financing limit  
8 the effect of free market competition and raise the need for carefully  
9 tailored government planning and regulation to control costs,  
10 utilization, and distribution of health care services and facilities;

11 (b) That excess capacity of health services and facilities place  
12 considerable economic burden on the public who pay for the construction  
13 and operation of these facilities as patients, health insurance  
14 purchasers, carriers, and taxpayers;

15 (c) That the development and ongoing maintenance of current and  
16 accurate health care information and statistics related to cost and  
17 quality of health care, as well as projections of need for health  
18 facilities and services, are essential to effective strategic health  
19 planning; and

20 (d) That an informed understanding of the state's health system can  
21 promote the development of a competitive health care system that is  
22 affordable, offers high quality services, and operates in a cost-  
23 effective manner.

24 (3) The strategy shall include:

25 (a) A health system assessment and objectives component that:

26 (i) Describes state and regional population demographics, health  
27 status indicators, and trends in health status and health care needs;  
28 and

29 (ii) Identifies key policy objectives for the state health system  
30 related to access to care, health outcomes, quality, and cost-  
31 effectiveness;

32 (b) A health care facilities and services plan that shall assess  
33 the demand for health care facilities and services to inform state  
34 health planning efforts and direct certificate of need determinations.  
35 The plan shall include:

36 (i) An inventory of each geographic region's existing health care  
37 facilities and services;

1 (ii) Projections of need for each category of health care facility  
2 and service, including those subject to certificate of need;

3 (iii) Policies to guide the addition of new or expanded health care  
4 facilities and services to promote the use of quality, evidence-based,  
5 cost-effective health care delivery options, including any  
6 recommendations for criteria, standards, and methods relevant to the  
7 certificate of need review process; and

8 (iv) An assessment of the availability of health care providers,  
9 public health resources, transportation infrastructure, and other  
10 considerations necessary to support the needed health care facilities  
11 and services in each region;

12 (c) A health care data resource plan that identifies data elements  
13 necessary to properly conduct planning activities and to review  
14 certificate of need applications, including data related to inpatient  
15 and outpatient utilization and outcomes information, and financial and  
16 utilization information related to charity care, quality, and cost.  
17 The plan shall inventory existing data resources, both public and  
18 private, that store and disclose information relevant to the health  
19 planning process, including information necessary to conduct  
20 certificate of need activities pursuant to chapter 70.38 RCW. The plan  
21 shall identify any deficiencies in the inventory of existing data  
22 resources and the data necessary to conduct comprehensive health  
23 planning activities. The plan may recommend that the office be  
24 authorized to access existing data sources and conduct appropriate  
25 analyses of such data or that other agencies expand their data  
26 collection activities as statutory authority permits. The plan may  
27 identify any computing infrastructure deficiencies that impede the  
28 proper storage, transmission, and analysis of health planning data;

29 (d) An assessment of emerging trends in health care delivery and  
30 technology as they relate to access to health care facilities and  
31 services, quality of care, and costs of care. The assessment shall  
32 recommend any changes to the scope of health care facilities and  
33 services covered by the certificate of need program that may be  
34 warranted by these emerging trends. In addition, the assessment may  
35 recommend any changes to criteria used by the department to review  
36 certificate of need applications, as necessary;

37 (e) A rural health resource plan to assess the availability of  
38 health resources in rural areas of the state, assess the unmet needs of

1 these communities, and evaluate how federal and state reimbursement  
2 policies can be modified, if necessary, to more efficiently and  
3 effectively meet the health care needs of rural communities. The plan  
4 shall consider the unique health care needs of rural communities, the  
5 adequacy of the rural health workforce, and transportation needs for  
6 accessing appropriate care.

7 (4) The commission shall submit the final strategy to the governor  
8 by January 1, 2009. Every two years the commission shall submit a  
9 strategy. The health care facilities and services plan as it pertains  
10 to a distinct geographic planning region may be updated by individual  
11 categories on a rotating, biannual schedule.

12 (5) The commission shall hold at least one public hearing and allow  
13 opportunity to submit written comments prior to the issuance of the  
14 initial strategy, an updated strategy, or an updated health care  
15 facilities and services plan.

16 NEW SECTION. **Sec. 6.** The commission shall submit the strategy to  
17 the department of health to direct its activities related to the  
18 certificate of need review program under chapter 70.38 RCW. As the  
19 health care facilities and services plan is updated for any specific  
20 geographic planning region, the commission shall submit that plan to  
21 the department of health to direct its activities related to the  
22 certificate of need review program under chapter 70.38 RCW. The  
23 commission shall not issue determinations of the merits of specific  
24 project proposals submitted by applicants for certificates of need.

25 NEW SECTION. **Sec. 7.** (1) The office may respond to requests for  
26 data and other information from its computerized system for special  
27 studies and analysis consistent with requirements for confidentiality  
28 of patient, provider, and facility-specific records. The office may  
29 require requestors to pay any or all of the reasonable costs associated  
30 with such requests that might be approved.

31 (2) Data elements related to the identification of individual  
32 patient's, provider's, and facility's care outcomes are confidential,  
33 are exempt from RCW 42.56.030 through 42.56.570 and 42.17.350 through  
34 42.17.450, and are not subject to discovery by subpoena or admissible  
35 as evidence.

1       **Sec. 8.** RCW 70.38.015 and 1989 1st ex.s. c 9 s 601 are each  
2 amended to read as follows:

3       It is declared to be the public policy of this state:

4       (1) That strategic health planning ((to)) efforts must be supported  
5 by appropriately tailored regulatory activities that can effectuate the  
6 goals and principles of the statewide health resources strategy  
7 developed pursuant to chapter 43.-- RCW (sections 1 through 7 of this  
8 act). The realization of such strategic health planning can promote,  
9 maintain, and assure the health of all citizens in the state, to  
10 provide accessible health services, health manpower, health facilities,  
11 and other resources while controlling ((excessive)) increases in costs,  
12 and to recognize prevention as a high priority in health programs((, is  
13 essential to the health, safety, and welfare of the people of the  
14 state. Health planning should be responsive to changing health and  
15 social needs and conditions. Involvement in health planning from both  
16 consumers and providers throughout the state should be encouraged));

17       (2) ((That the development of health services and resources,  
18 including the construction, modernization, and conversion of health  
19 facilities, should be accomplished in a planned, orderly fashion,  
20 consistent with identified priorities and without unnecessary  
21 duplication or fragmentation)) That the certificate of need program is  
22 a component of a health planning regulatory process that:

23       (a) Is consistent with the statewide health resources strategy and  
24 public policy goals that are clearly articulated and regularly updated;

25       (b) Balances consideration of:

26       (i) Access to quality care at a reasonable cost for all residents;

27       (ii) Optimal use of existing health care resources;

28       (iii) Fostering expenditure control; and

29       (iv) Elimination of unnecessary duplication of health care  
30 facilities and services;

31       (c) Supports improved health care outcomes by:

32       (i) Basing decisions on the best available evidence and  
33 information; and

34       (ii) Continuously monitoring compliance;

35       (d) Is accountable for maintaining the resources necessary for high  
36 quality decisions that are timely and consistent;

37       (e) Utilizes detailed criteria, standards, and need methodologies,

1 both general and specific to particular facilities and services, that  
2 are updated at least biennially and that are complementary to the  
3 statewide health resources strategy; and

4 (f) Is conducted in a transparent and accountable manner;

5 (3) That the development and ongoing maintenance of adequate health  
6 care information, statistics and projections of need for health  
7 facilities and services ~~((is))~~ are essential to ~~((effective health~~  
8 ~~planning and resources development))~~ supporting the review and  
9 monitoring of specified health care facilities and services regulated  
10 by the certificate of need program;

11 (4) That the development of ~~((nonregulatory))~~ other approaches to  
12 health care ~~((cost containment should be))~~ expenditure control are  
13 considered, including the strengthening of ~~((price))~~ competition~~((; and~~

14 ~~(5) That health planning should be concerned with public health and~~  
15 ~~health care financing, access, and quality, recognizing their close~~  
16 ~~interrelationship and emphasizing cost control of health services,~~  
17 ~~including cost effectiveness and cost benefit analysis)).~~

18 **Sec. 9.** RCW 70.38.025 and 2000 c 175 s 22 are each amended to read  
19 as follows:

20 When used in this chapter, the terms defined in this section shall  
21 have the meanings indicated.

22 (1) "Board of health" means the state board of health created  
23 pursuant to chapter 43.20 RCW.

24 (2) "Capital expenditure" is an expenditure, including a force  
25 account expenditure (i.e., an expenditure for a construction project  
26 undertaken by a nursing home facility as its own contractor) which,  
27 under generally accepted accounting principles, is not properly  
28 chargeable as an expense of operation or maintenance. Where a person  
29 makes an acquisition under lease or comparable arrangement, or through  
30 donation, which would have required review if the acquisition had been  
31 made by purchase, such expenditure shall be deemed a capital  
32 expenditure. Capital expenditures include donations of equipment or  
33 facilities to a nursing home facility which if acquired directly by  
34 such facility would be subject to certificate of need review under the  
35 provisions of this chapter and transfer of equipment or facilities for  
36 less than fair market value if a transfer of the equipment or  
37 facilities at fair market value would be subject to such review. The

1 cost of any studies, surveys, designs, plans, working drawings,  
2 specifications, and other activities essential to the acquisition,  
3 improvement, expansion, or replacement of any plant or equipment with  
4 respect to which such expenditure is made shall be included in  
5 determining the amount of the expenditure.

6 (3) "Continuing care retirement community" means an entity which  
7 provides shelter and services under continuing care contracts with its  
8 members and which sponsors or includes a health care facility or a  
9 health service. A "continuing care contract" means a contract to  
10 provide a person, for the duration of that person's life or for a term  
11 in excess of one year, shelter along with nursing, medical, health-  
12 related, or personal care services, which is conditioned upon the  
13 transfer of property, the payment of an entrance fee to the provider of  
14 such services, or the payment of periodic charges for the care and  
15 services involved. A continuing care contract is not excluded from  
16 this definition because the contract is mutually terminable or because  
17 shelter and services are not provided at the same location.

18 (4) "Department" means the department of health.

19 (5) "Expenditure minimum" means, for the purposes of the  
20 certificate of need program, one million dollars adjusted by the  
21 department by rule to reflect changes in the United States department  
22 of commerce composite construction cost index; or a lesser amount  
23 required by federal law and established by the department by rule.

24 (6) "Health care facility" means hospices, hospice care centers,  
25 hospitals, psychiatric hospitals, nursing homes, kidney disease  
26 treatment centers, ambulatory surgical facilities, and home health  
27 agencies, and includes such facilities when owned and operated by a  
28 political subdivision or instrumentality of the state and such other  
29 facilities as required by federal law and implementing regulations, but  
30 does not include any health facility or institution conducted by and  
31 for those who rely exclusively upon treatment by prayer or spiritual  
32 means in accordance with the creed or tenets of any well-recognized  
33 church or religious denomination, or any health facility or institution  
34 operated for the exclusive care of members of a convent as defined in  
35 RCW 84.36.800 or rectory, monastery, or other institution operated for  
36 the care of members of the clergy. In addition, the term does not  
37 include any nonprofit hospital: (a) Which is operated exclusively to

1 provide health care services for children; (b) which does not charge  
2 fees for such services; and (c) if not contrary to federal law as  
3 necessary to the receipt of federal funds by the state.

4 (7) "Health maintenance organization" means a public or private  
5 organization, organized under the laws of the state, which:

6 (a) Is a qualified health maintenance organization under Title  
7 XIII, section 1310(d) of the Public Health Services Act; or

8 (b)(i) Provides or otherwise makes available to enrolled  
9 participants health care services, including at least the following  
10 basic health care services: Usual physician services, hospitalization,  
11 laboratory, X-ray, emergency, and preventive services, and out-of-area  
12 coverage; (ii) is compensated (except for copayments) for the provision  
13 of the basic health care services listed in (b)(i) to enrolled  
14 participants by a payment which is paid on a periodic basis without  
15 regard to the date the health care services are provided and which is  
16 fixed without regard to the frequency, extent, or kind of health  
17 service actually provided; and (iii) provides physicians' services  
18 primarily (A) directly through physicians who are either employees or  
19 partners of such organization, or (B) through arrangements with  
20 individual physicians or one or more groups of physicians (organized on  
21 a group practice or individual practice basis).

22 (8) "Health services" means clinically related (i.e., preventive,  
23 diagnostic, curative, rehabilitative, or palliative) services and  
24 includes alcoholism, drug abuse, and mental health services and as  
25 defined in federal law.

26 (9) "Health service area" means a geographic region appropriate for  
27 effective health planning which includes a broad range of health  
28 services.

29 (10) "Person" means an individual, a trust or estate, a  
30 partnership, a corporation (including associations, joint stock  
31 companies, and insurance companies), the state, or a political  
32 subdivision or instrumentality of the state, including a municipal  
33 corporation or a hospital district.

34 (11) "Provider" generally means a health care professional or an  
35 organization, institution, or other entity providing health care but  
36 the precise definition for this term shall be established by rule of  
37 the department, consistent with federal law.

1 (12) "Public health" means the level of well-being of the general  
2 population; those actions in a community necessary to preserve,  
3 protect, and promote the health of the people for which government is  
4 responsible; and the governmental system developed to guarantee the  
5 preservation of the health of the people.

6 (13) "Secretary" means the secretary of health or the secretary's  
7 designee.

8 (14) "Statewide health resource strategy" or "strategy" means the  
9 statewide health resource strategy developed by the Washington health  
10 resource strategy commission pursuant to chapter 43.-- RCW (sections 1  
11 through 7 of this act).

12 (15) "Tertiary health service" means a specialized service that  
13 meets complicated medical needs of people and requires sufficient  
14 patient volume to optimize provider effectiveness, quality of service,  
15 and improved outcomes of care.

16 ((+15)) (16) "Hospital" means any health care institution which is  
17 required to qualify for a license under RCW 70.41.020((+2)); or as a  
18 psychiatric hospital under chapter 71.12 RCW.

19 **Sec. 10.** RCW 70.38.095 and 2005 c 274 s 332 are each amended to  
20 read as follows:

21 (1) The department shall adopt policies for informing affected  
22 parties and the interested public of certificate of need activities  
23 through postal mailings, electronic mailings, or web site notification,  
24 as appropriate to the activity. The policy shall, at a minimum,  
25 include means for providing reasonable notification for distributing  
26 information related to: Applications; the status of the department's  
27 activities related to applications under consideration; findings and  
28 decisions of the department; the status of appeals of findings and  
29 decisions of the department; and the monitoring status of approved  
30 projects.

31 (2) Public accessibility to records shall be accorded by health  
32 systems agencies pursuant to Public Law 93-641 and chapter 42.56 RCW.  
33 A health systems agency shall be considered a "public agency" for the  
34 sole purpose of complying with the public records act, chapter 42.56  
35 RCW.

1           **Sec. 11.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to  
2 read as follows:

3           (1) Certificates of need shall be issued, denied, suspended, or  
4 revoked by the designee of the secretary in accord with the provisions  
5 of this chapter and rules of the department (~~(which)~~) that develop  
6 review criteria and establish review procedures (~~(and criteria for the~~  
7 ~~certificate of need program)~~).

8           (2) Criteria for the review of certificate of need applications,  
9 except as provided in subsection (3) of this section for health  
10 maintenance organizations, shall include but not be limited to  
11 consideration of the following:

12           (a) (~~The need that the population served or to be served by such~~  
13 ~~services has for such services~~) Community need for the proposed  
14 services based on current utilization data, evidence related to  
15 appropriate utilization, and utilization trends;

16           (b) The availability of less costly or more effective alternative  
17 methods of providing such services;

18           (c) The financial feasibility and the probable impact of the  
19 proposal on the cost of and charges for providing health services in  
20 the community to be served, including the impact on the current health  
21 system infrastructure and ability of existing providers to serve the  
22 underinsured and uninsured;

23           (d) In the case of health services to be provided(~~( $\tau$ )~~):

24           (i) The availability of alternative uses of project resources for  
25 the provision of other health services(~~( $\tau$ )~~);

26           (ii) The extent to which such proposed services will be accessible  
27 to all residents of the area to be served(~~( $\tau$ )~~); and

28           (iii) (~~the need for and the availability in the community of~~  
29 ~~services and facilities for osteopathic physicians and surgeons and~~  
30 ~~allopathic physicians and their patients.~~) The (~~department shall~~  
31 ~~consider the application in terms of its~~) impact on existing and  
32 proposed institutional and other educational training programs for  
33 (~~doctors of osteopathic medicine and surgery and medicine~~) health  
34 care providers at the student, internship, and residency training  
35 levels;

36           (e) In the case of a construction project, the costs and methods of  
37 the proposed construction, including the cost and methods of energy  
38 provision, and the probable impact of the (~~construction~~) project

1 (~~reviewed~~) (i) on the cost of providing (~~health~~) services by the  
2 (~~person proposing such construction project~~) applicant and (ii) on  
3 the cost (~~and charges to the public~~) of providing (~~health~~) services  
4 by other (~~persons~~) entities;

5 (f) The special needs and circumstances of (~~osteopathic hospitals,~~  
6 ~~nonallopathic services and~~) children's hospitals;

7 (g) Improvements or innovations in the financing and delivery of  
8 health services (~~which~~) that foster cost containment (~~and serve to~~  
9 ~~promote quality assurance and~~), improved health outcomes, cost-  
10 effectiveness, and promote equality;

11 (h) (~~In the case of~~) For proposed health services (~~proposed to~~  
12 ~~be provided~~), a comparison of the efficiency and appropriateness of  
13 the use of similar existing services and facilities (~~similar to those~~  
14 ~~proposed~~);

15 (i) (~~In the case of~~) For existing services or facilities, the  
16 quality of care provided by such services or facilities in the past;

17 (j) In the case of hospitals (~~certificate of need applications~~),  
18 whether the (~~hospital~~) applicant meets or exceeds the regional  
19 average level of charity care, as determined by the secretary(~~and~~),  
20 and whether the applicant has adopted policies in excess of the charity  
21 care and reporting requirement of RCW 70.170.060;

22 (k) (~~In the case of~~) For nursing home applications:

23 (i) The availability of other nursing home beds in the planning  
24 area to be served; and

25 (ii) The availability of other services in the community to be  
26 served. Data used to determine the availability of other services will  
27 include but not be limited to data provided by the department of social  
28 and health services;

29 (l) For certificate of need regulated services other than  
30 hospitals, whether the applicant will provide charity care at least  
31 comparable to current community standards for the services to be  
32 offered;

33 (m) The availability of appropriate health care providers to  
34 deliver the proposed service; and

35 (n) Whether the applicant agrees to provide services to medicaid  
36 and medicare enrollees and agrees not to discriminate against medicaid  
37 and medicare enrollees based upon their coverage.

1 (3) A certificate of need application of a health maintenance  
2 organization or a health care facility which is controlled, directly or  
3 indirectly, by a health maintenance organization, shall be approved by  
4 the department if the department finds:

5 (a) Approval of such application is required to meet the needs of  
6 the members of the health maintenance organization and of the new  
7 members which such organization can reasonably be expected to enroll;  
8 and

9 (b) The health maintenance organization is unable to provide,  
10 through services or facilities which can reasonably be expected to be  
11 available to the organization, its health services in a reasonable and  
12 cost-effective manner which is consistent with the basic method of  
13 operation of the organization and which makes such services available  
14 on a long-term basis through physicians and other health professionals  
15 associated with it.

16 A health care facility, or any part thereof, with respect to which  
17 a certificate of need was issued under this subsection may not be sold  
18 or leased and a controlling interest in such facility or in a lease of  
19 such facility may not be acquired unless the department issues a  
20 certificate of need approving the sale, acquisition, or lease.

21 ~~((Until the final expiration of the state health plan as  
22 provided under RCW 70.38.919, the decision of the department on a  
23 certificate of need application shall be consistent with the state  
24 health plan in effect, except in emergency circumstances which pose a  
25 threat to the public health.))~~ Certificate of need determinations must  
26 be consistent with the statewide health resources strategy developed  
27 pursuant to section 5 of this act, including any health planning  
28 policies and goals identified in the statewide health resources  
29 strategy in effect at the time of application.

30 (5) The department ~~((in making its final decision))~~ may issue a  
31 conditional certificate of need if it finds that the project is  
32 justified only under specific circumstances. The conditions shall  
33 directly relate to the project being reviewed. The conditions may be  
34 ~~((released))~~ eliminated if it can be substantiated that the conditions  
35 are no longer valid and the ~~((release))~~ elimination of such conditions  
36 would be consistent with the purposes of this chapter.

37 ~~((+5))~~ (6) Criteria adopted for review in accordance with

1 subsection (2) of this section may vary according to the purpose for  
2 which the particular review is being conducted or the type of health  
3 service reviewed.

4 ~~((+6+))~~ (7) The department shall specify information to be required  
5 for certificate of need applications. Within fifteen days of receipt  
6 of the application, the department shall request additional information  
7 considered necessary to the application or start the review process.  
8 Applicants may decline to submit requested information through written  
9 notice to the department, in which case review starts on the date of  
10 receipt of the notice. Applications may be denied or limited because  
11 of failure to submit required and necessary information.

12 ~~((+7+))~~ (8) Concurrent review is for the purpose of comparative  
13 analysis and evaluation of competing or similar projects in order to  
14 determine which of the projects may best meet identified needs.  
15 Categories of projects subject to concurrent review include at least  
16 new health care facilities, new services, and expansion of existing  
17 health care facilities. The department shall specify time periods for  
18 the submission of applications for certificates of need subject to  
19 concurrent review, which shall not exceed ninety days. Review of  
20 concurrent applications shall start fifteen days after the conclusion  
21 of the time period for submission of applications subject to concurrent  
22 review. Concurrent review periods shall be limited to one hundred  
23 fifty days, except as provided for in rules adopted by the department  
24 authorizing and limiting amendment during the course of the review, or  
25 for an unresolved pivotal issue declared by the department.

26 ~~((+8+))~~ (9) Review periods for certificate of need applications  
27 other than those subject to concurrent review shall be limited to  
28 ninety days. Review periods may be extended up to thirty days if  
29 needed by a review agency, and for unresolved pivotal issues the  
30 department may extend up to an additional thirty days. A review may be  
31 extended in any case if the applicant agrees to the extension.

32 ~~((+9+))~~ (10) The department or its designee, shall conduct a public  
33 hearing on a certificate of need application if requested unless the  
34 review is expedited or subject to emergency review. The department by  
35 rule shall specify the period of time within which a public hearing  
36 must be requested and requirements related to public notice of the  
37 hearing, procedures, recordkeeping and related matters.

1       (~~(10)~~) (11)(a) Any applicant denied a certificate of need or  
2 whose certificate of need has been suspended or revoked has the right  
3 to an adjudicative proceeding. The proceeding is governed by chapter  
4 34.05 RCW, the Administrative Procedure Act.

5       (b) Any health care facility or health maintenance organization  
6 that: (i) Provides services similar to the services provided by the  
7 applicant and under review pursuant to this subsection; (ii) is located  
8 within the applicant's health service area; and (iii) testified or  
9 submitted evidence at a public hearing held pursuant to subsection  
10 (~~(9)~~) (10) of this section, shall be provided an opportunity to  
11 present oral or written testimony and argument in a proceeding under  
12 this subsection: PROVIDED, That the health care facility or health  
13 maintenance organization had, in writing, requested to be informed of  
14 the department's decisions.

15       (c) If the department desires to settle with the applicant prior to  
16 the conclusion of the adjudicative proceeding, the department shall so  
17 inform the health care facility or health maintenance organization and  
18 afford them an opportunity to comment, in advance, on the proposed  
19 settlement.

20       (~~(11)~~) (12) An amended certificate of need shall be required for  
21 the following modifications of an approved project:

22       (a) A new service requiring review under this chapter;

23       (b) An expansion of a service subject to review beyond that  
24 originally approved;

25       (c) An increase in bed capacity;

26       (d) A significant reduction in the scope of a nursing home project  
27 without a commensurate reduction in the cost of the nursing home  
28 project, or a cost increase (as represented in bids on a nursing home  
29 construction project or final cost estimates acceptable to the person  
30 to whom the certificate of need was issued) if the total of such  
31 increases exceeds twelve percent or fifty thousand dollars, whichever  
32 is greater, over the maximum capital expenditure approved. The review  
33 of reductions or cost increases shall be restricted to the continued  
34 conformance of the nursing home project with the review criteria  
35 pertaining to financial feasibility and cost containment.

36       (~~(12)~~) (13) An application for a certificate of need for a  
37 nursing home capital expenditure which is determined by the department

1 to be required to eliminate or prevent imminent safety hazards or  
2 correct violations of applicable licensure and accreditation standards  
3 shall be approved.

4 ~~((+13+))~~ (14)(a) Replacement of existing nursing home beds in the  
5 same planning area by an existing licensee who has operated the beds  
6 for at least one year shall not require a certificate of need under  
7 this chapter. The licensee shall give written notice of its intent to  
8 replace the existing nursing home beds to the department and shall  
9 provide the department with information as may be required pursuant to  
10 rule. Replacement of the beds by a party other than the licensee is  
11 subject to certificate of need review under this chapter, except as  
12 otherwise permitted by subsection ~~((+14+))~~ (15) of this section.

13 (b) When an entire nursing home ceases operation, the licensee or  
14 any other party who has secured an interest in the beds may reserve his  
15 or her interest in the beds for eight years or until a certificate of  
16 need to replace them is issued, whichever occurs first. However, the  
17 nursing home, licensee, or any other party who has secured an interest  
18 in the beds must give notice of its intent to retain the beds to the  
19 department of health no later than thirty days after the effective date  
20 of the facility's closure. Certificate of need review shall be  
21 required for any party who has reserved the nursing home beds except  
22 that the need criteria shall be deemed met when the applicant is the  
23 licensee who had operated the beds for at least one year, who has  
24 operated the beds for at least one year immediately preceding the  
25 reservation of the beds, and who is replacing the beds in the same  
26 planning area.

27 ~~((+14+))~~ (15) In the event that a licensee, who has provided the  
28 department with notice of his or her intent to replace nursing home  
29 beds under subsection ~~((+13+))~~ (14)(a) of this section, engages in  
30 unprofessional conduct or becomes unable to practice with reasonable  
31 skill and safety by reason of mental or physical condition, pursuant to  
32 chapter 18.130 RCW, or dies, the building owner shall be permitted to  
33 complete the nursing home bed replacement project, provided the  
34 building owner has secured an interest in the beds.

35 **Sec. 12.** RCW 70.38.125 and 1989 1st ex.s. c 9 s 606 are each  
36 amended to read as follows:

37 (1) A certificate of need shall be valid for two years. One six-

1 month extension may be made if it can be substantiated that substantial  
2 and continuing progress toward commencement of the project has been  
3 made as defined by regulations to be adopted pursuant to this chapter.

4 (2) A project for which a certificate of need has been issued shall  
5 be commenced during the validity period for the certificate of need.

6 (3) The department shall monitor the approved projects to assure  
7 conformance with certificates of need that have been issued. Rules and  
8 regulations adopted shall specify when changes in the project require  
9 reevaluation of the project. The department may require applicants to  
10 submit periodic progress reports on approved projects or other  
11 information as may be necessary to effectuate its monitoring  
12 responsibilities.

13 (4) The secretary, in the case of a new health facility, shall not  
14 issue any license unless and until a prior certificate of need shall  
15 have been issued by the department for the offering or development of  
16 such new health facility.

17 ~~((5) Any person who engages in any undertaking which requires  
18 certificate of need review without first having received from the  
19 department either a certificate of need or an exception granted in  
20 accordance with this chapter shall be liable to the state in an amount  
21 not to exceed one hundred dollars a day for each day of such  
22 unauthorized offering or development. Such amounts of money shall be  
23 recoverable in an action brought by the attorney general on behalf of  
24 the state in the superior court of any county in which the unauthorized  
25 undertaking occurred. Any amounts of money so recovered by the  
26 attorney general shall be deposited in the state general fund.~~

27 ~~(6) The department may bring any action to enjoin a violation or  
28 the threatened violation of the provisions of this chapter or any rules  
29 and regulations adopted pursuant to this chapter, or may bring any  
30 legal proceeding authorized by law, including but not limited to the  
31 special proceedings authorized in Title 7 RCW, in the superior court in  
32 the county in which such violation occurs or is about to occur, or in  
33 the superior court of Thurston county.)~~

34 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.38 RCW  
35 to read as follows:

36 (1) Upon completion of a project, the department shall continue to  
37 monitor the operation of the project and the provision of the approved

1 service for five years to assure that the project complies with the  
2 terms and conditions of the certificate, including the population  
3 served, medicare beneficiaries and medical assistance program clients  
4 served, levels of charity care provided, utilization and volume  
5 standards applicable to tertiary services, special conditions and  
6 representations associated with the approval of the project, and other  
7 items relevant to the project.

8 (2) The department shall adopt rules to establish the  
9 responsibilities of certificate recipients to assist the department in  
10 regular monitoring of completed projects.

11 (3) Other agencies having data relevant to the department's  
12 postcompletion monitoring activities shall cooperate with the  
13 department in sharing such information.

14 (4) The department shall establish a fee for postcompletion  
15 monitoring activities.

16 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.38 RCW  
17 to read as follows:

18 (1) In any case in which the department finds that there has been  
19 a failure or refusal to comply with the requirements of this chapter,  
20 the standards or rules adopted pursuant to this chapter, or the terms  
21 and conditions of an approved certificate of need, the department is  
22 authorized to suspend, revoke, or modify a certificate of need for an  
23 approved project or impose other appropriate penalties, including  
24 fines, not to exceed ten thousand dollars per violation, and moratoria  
25 on future certificate of need applications for a specified period of  
26 time, not to exceed two years. The department shall establish  
27 procedures for the notification to the recipient of a certificate of  
28 need of an adverse action against a certificate of need and to provide  
29 the right to an adjudicative proceeding. Upon the issuance of an  
30 adverse action for a violation of this section, the department shall  
31 notify any agency that may have issued a license for the project that  
32 an action has been taken and the nature of the violation. If the  
33 licensing agency determines that the underlying facts constitute a  
34 violation of any licensing provisions, the licensing agency may take  
35 appropriate disciplinary action within its authority.

36 (2) Any person who engages in any undertaking which requires  
37 certificate of need review without first having received from the

1 department either a certificate of need or an exception granted in  
2 accordance with this chapter is liable to the state in an amount not to  
3 exceed one hundred dollars a day for each day of such unauthorized  
4 offering or development. Such amounts of money are recoverable in an  
5 action brought by the attorney general on behalf of the state in the  
6 superior court of any county in which the unauthorized undertaking  
7 occurred. Any amounts of money so recovered by the attorney general  
8 shall be deposited in the state general fund.

9 (3) The department may bring any action to enjoin a violation or  
10 the threatened violation of the provisions of this chapter or any rules  
11 adopted pursuant to this chapter, or may bring any legal proceeding  
12 authorized by law, including but not limited to the special proceedings  
13 authorized in Title 7 RCW, in the superior court in the county in which  
14 such violation occurs or is about to occur, or in the superior court of  
15 Thurston county.

16 **Sec. 15.** RCW 70.38.135 and 1989 1st ex.s. c 9 s 607 are each  
17 amended to read as follows:

18 The secretary shall have authority to:

19 (1) Provide when needed temporary or intermittent services of  
20 experts or consultants or organizations thereof, by contract, when such  
21 services are to be performed on a part time or fee-for-service basis;

22 (2) Make or cause to be made such on-site surveys of health care or  
23 medical facilities as may be necessary for the administration of the  
24 certificate of need program, including any monitoring activities  
25 conducted pursuant to this chapter;

26 (3) Upon review of recommendations, if any, from the board of  
27 health or the Washington health resource strategy commission:

28 (a) Promulgate rules under which health care facilities providers  
29 doing business within the state shall submit to the department such  
30 data related to health and health care as the department finds  
31 necessary to the performance of its functions under this chapter;

32 (b) Promulgate rules pertaining to the maintenance and operation of  
33 medical facilities which receive federal assistance under the  
34 provisions of Title XVI;

35 (c) Promulgate rules in implementation of the provisions of this  
36 chapter, including the establishment of procedures for public hearings

1 for predecisions and post-decisions on applications for certificate of  
2 need;

3 (d) Promulgate rules providing circumstances and procedures of  
4 expedited certificate of need review if there has not been a  
5 significant change in existing health facilities of the same type or in  
6 the need for such health facilities and services;

7 (4) Grant allocated state funds to qualified entities, as defined  
8 by the department, to fund not more than seventy-five percent of the  
9 costs of regional planning activities, excluding costs related to  
10 review of applications for certificates of need, provided for in this  
11 chapter or approved by the department; and

12 (5) Contract with and provide reasonable reimbursement for  
13 qualified entities to assist in determinations of certificates of need.

14 **Sec. 16.** RCW 70.38.105 and 2004 c 261 s 6 are each amended to read  
15 as follows:

16 (1) The department is authorized and directed to implement the  
17 certificate of need program in this state pursuant to the provisions of  
18 this chapter.

19 (2) There shall be a state certificate of need program which is  
20 administered consistent with the requirements of federal law as  
21 necessary to the receipt of federal funds by the state.

22 (3) No person shall engage in any undertaking which is subject to  
23 certificate of need review under subsection (4) of this section without  
24 first having received from the department either a certificate of need  
25 or an exception granted in accordance with this chapter.

26 (4) The following shall be subject to certificate of need review  
27 under this chapter:

28 (a) The construction, development, or other establishment of a new  
29 health care facility;

30 (b) The sale, purchase, or lease of part or all of any existing  
31 hospital as defined in RCW 70.38.025;

32 (c) Any capital expenditure for the construction, renovation, or  
33 alteration of a nursing home which substantially changes the services  
34 of the facility after January 1, 1981, provided that the substantial  
35 changes in services are specified by the department in rule;

36 (d) Any capital expenditure for the construction, renovation, or  
37 alteration of a nursing home which exceeds the expenditure minimum as

1 defined by RCW 70.38.025. However, a capital expenditure which is not  
2 subject to certificate of need review under (a), (b), (c), or (e) of  
3 this subsection and which is solely for any one or more of the  
4 following is not subject to certificate of need review:

5 (i) Communications and parking facilities;

6 (ii) Mechanical, electrical, ventilation, heating, and air  
7 conditioning systems;

8 (iii) Energy conservation systems;

9 (iv) Repairs to, or the correction of, deficiencies in existing  
10 physical plant facilities which are necessary to maintain state  
11 licensure, however, other additional repairs, remodeling, or  
12 replacement projects that are not related to one or more deficiency  
13 citations and are not necessary to maintain state licensure are not  
14 exempt from certificate of need review except as otherwise permitted by  
15 (d)(vi) of this subsection or RCW 70.38.115(~~((+13))~~) (14);

16 (v) Acquisition of equipment, including data processing equipment,  
17 which is not or will not be used in the direct provision of health  
18 services;

19 (vi) Construction or renovation at an existing nursing home which  
20 involves physical plant facilities, including administrative, dining  
21 areas, kitchen, laundry, therapy areas, and support facilities, by an  
22 existing licensee who has operated the beds for at least one year;

23 (vii) Acquisition of land; and

24 (viii) Refinancing of existing debt;

25 (e) A change in bed capacity of a health care facility which  
26 increases the total number of licensed beds or redistributes beds among  
27 acute care, nursing home care, and boarding home care if the bed  
28 redistribution is to be effective for a period in excess of six months,  
29 or a change in bed capacity of a rural health care facility licensed  
30 under RCW 70.175.100 that increases the total number of nursing home  
31 beds or redistributes beds from acute care or boarding home care to  
32 nursing home care if the bed redistribution is to be effective for a  
33 period in excess of six months. A health care facility certified as a  
34 critical access hospital under 42 U.S.C. 1395i-4 may increase its total  
35 number of licensed beds to the total number of beds permitted under 42  
36 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under  
37 42 U.S.C. 1395i-4 among acute care and nursing home care without being  
38 subject to certificate of need review. If there is a nursing home

1 licensed under chapter 18.51 RCW within twenty-seven miles of the  
2 critical access hospital, the critical access hospital is subject to  
3 certificate of need review except for:

4 (i) Critical access hospitals which had designated beds to provide  
5 nursing home care, in excess of five swing beds, prior to December 31,  
6 2003; or

7 (ii) Up to five swing beds.

8 Critical access hospital beds not subject to certificate of need  
9 review under this subsection (4)(e) will not be counted as either acute  
10 care or nursing home care for certificate of need review purposes. If  
11 a health care facility ceases to be certified as a critical access  
12 hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the  
13 type and number of licensed hospital beds as it had when it requested  
14 critical access hospital designation;

15 (f) Any new tertiary health services which are offered in or  
16 through a health care facility or rural health care facility licensed  
17 under RCW 70.175.100, and which were not offered on a regular basis by,  
18 in, or through such health care facility or rural health care facility  
19 within the twelve-month period prior to the time such services would be  
20 offered;

21 (g) Any expenditure for the construction, renovation, or alteration  
22 of a nursing home or change in nursing home services in excess of the  
23 expenditure minimum made in preparation for any undertaking under  
24 subsection (4) of this section and any arrangement or commitment made  
25 for financing such undertaking. Expenditures of preparation shall  
26 include expenditures for architectural designs, plans, working  
27 drawings, and specifications. The department may issue certificates of  
28 need permitting predevelopment expenditures, only, without authorizing  
29 any subsequent undertaking with respect to which such predevelopment  
30 expenditures are made; and

31 (h) Any increase in the number of dialysis stations in a kidney  
32 disease center.

33 (5) The department is authorized to charge fees for the review of  
34 certificate of need applications and requests for exemptions from  
35 certificate of need review. The fees shall be sufficient to cover the  
36 full cost of review and exemption, which may include the development of  
37 standards, criteria, and policies.

1           (6) No person may divide a project in order to avoid review  
2 requirements under any of the thresholds specified in this section.

3           NEW SECTION.   **Sec. 17.** The criteria in RCW 70.38.115 apply to any  
4 applications for a certificate of need submitted after the effective  
5 date of this act, except for the provisions of RCW 70.38.115(4) which  
6 apply to any applications for a certificate of need submitted after  
7 July 1, 2008.

8           NEW SECTION.   **Sec. 18.** Sections 1 through 7 of this act constitute  
9 a new chapter in Title 43 RCW.

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